

January 31, 2005

Bridget Moran
Washington State Department of Agriculture
Endangered Species Program
1111 Washington St., 2nd Floor – NRB
PO Box 42589
Olympia, WA 98504-2589

Dear Bridget:

Please accept the following as the comments of the Washington Toxics Coalition on WSDA's State Initiated Plan.

We are extremely disappointed that WSDA has chosen to abandon its plan to take action on pesticides that are present in streams at levels that can harm salmon, as outlined in the paper, *A Process for Evaluating Pesticides in Washington State Surface Waters for Potential Impacts to Salmonids*. That paper, published by the Washington State Pesticide/ESA Task Force, stated "The principal mission of the Task Force is to provide science-based guidance to natural resource and regulatory agencies on the potential adverse impacts of pesticides on salmonids and/or aquatic ecosystems." The paper described a process in which the Task Force would determine the impacts and WSDA would act to reduce those impacts.

The draft State Initiated Plan (SIP), rather than charting a course for restricting pesticides that harm salmon, sets out a strategy for minimizing changes in pesticide use in order to protect pesticide users. In fact, the plan states, "The Endangered Species Program was charged to ensure pesticide use remains available as a tool for agricultural production and agricultural production is in full compliance with the ESA." Clearly, the program has undergone a major shift, and is no longer a proactive program but a reactive one that is likely to undercut the effects of federal actions.

This change is at odds with the program's function as part of the implementation of the Endangered Species Act. While we recognize the importance of developing regulatory certainty for growers, WSDA's goal under the Endangered Species Act cannot be to maximize allowed pesticide use. WSDA must reframe its goal to ensure that salmon protection is front and center.

We are particularly concerned about several aspects of the plan.

Use of reduced application rate data. First, as stated above, WSDA's focus is on providing data to the Environmental Protection Agency in order to persuade the agency

to minimize protections. WSDA's goal is to "provide EPA with Washington State specific information that will allow EPA to consider assessment scenarios other than those that would result in maximum exposure." We have a major concern with this goal. EPA and NOAA Fisheries *should* be assessing maximum exposure scenarios, because that is what is allowed by law. That is, we feel strongly that maximum use rates must be the baseline for consideration of exposure and harm as long as those are the rates stated on the pesticide label. Reduced rates should not be used for assessing effects unless the legal rate is also reduced.

In practical terms, the proposal means that a consultation could lead to a decision to have no or low levels of mitigation based on current use rates, despite the fact that EPA authorizes far greater use and exposure. Therefore, there is no guarantee that use will not go up, in which case the mitigation would be insufficient. Any use rates that become the basis for mitigation must therefore become the legally binding use rates as well.

Need for consultation. We are concerned that the plan assumes that consultation may not occur on a certain pesticide if it can be determined that it is not likely to adversely affect salmonids because actual uses are less than labeled uses. Because of the counterpart regulations issued in 2004, only pesticides deemed likely to adversely affect salmonids will receive consultation with NOAA Fisheries. Therefore, if EPA makes a determination that use is less than labeled uses and that the pesticide is not likely to adversely affect salmonids, NOAA Fisheries will not consult on that pesticide. It is imperative that NOAA Fisheries scrutinize this analysis in the context of a consultation.

Surface water monitoring program. To date, WSDA has used its surface water monitoring program not for its intended purpose but as a way to minimize the problem of pesticide contamination in the eyes of the public. WTC staff have served on the advisory group for the monitoring program, and WSDA staff repeated stated that the monitoring data would be considered meaningful only after several years of data were available. However, WSDA published the first year's data several months ago with a very strong spin to the public communicating that the results showed that agricultural pesticide use was resulting in little stream contamination. We strongly disagree with the way this was handled and request that WSDA limit its use of the data to its intended use: to determine whether mitigation measures are reducing pesticide contamination of surface water. Communications with the public should focus on the number of pesticides detected, the range of frequency of detections, and whether those detections exceeded aquatic life criteria.

County Bulletins. WSDA proposes using county bulletins to communicate changes in allowable uses to pesticide users. We are very concerned that pesticide users will not have easy access to these bulletins and will therefore be uninformed about changes in label rates. We urge WSDA to ensure that any information about changes in allowable use rates be present on the pesticide label or accompany the product as a supplemental label.

In conclusion, we are concerned that WSDA's program will result in a greater threat to

salmon from pesticides, rather than serving to protect salmon. We request that WSDA reconsider this approach and develop an approach that more closely resembles the original mandate of the program, which was to restrict pesticide uses that may harm salmon.

Sincerely,

Erika Schreder
Staff Scientist